

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

E*TRADE SAVINGS BANK; and	:	<u>ANSWER</u>
E* TRADE MORTGAGE CORPORATION,	:	
 Plaintiffs, -against-		07-CV-8065 (LTS)(AJP)
 NATIONAL SETTLEMENT AGENCY, INC.; FAST TRACK TITLE AGENCY LLC; STEVEN M. LEFF; RACHEL M. LEFF; AND RICHARD A. LEFF, Defendants.		

Defendant, RICHARD A. LEFF (hereinafter referred to as "Defendant"), by and through his attorneys, KAUFMAN BORGEEST & RYAN LLP, responds to the allegations made against him in the Plaintiffs' Complaint as follows:

PARTIES

1. The Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "1" of the Plaintiffs' Complaint.
2. The Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "2" of the Plaintiffs' Complaint.
3. The Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "3" of the Plaintiffs' Complaint.
4. The Defendant admits to the allegations contained in paragraph "4" of the Plaintiffs' Complaint.
5. The Defendant denies the allegations contained in paragraph "5" of the Plaintiffs' Complaint.

6. The Defendant admits that Steven M. Leff was the president of NSA, but denies knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph "6" of the Plaintiffs' Complaint.

7. The Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "7" of the Plaintiffs' Complaint.

8. The Defendant admits that Richard Leff is an attorney licensed in the State of New York, the brother of Steven M. Leff, that he resides 10 Park Road, Short Hills, NJ, and that he was an employee of NSA and Fast Track, but denies the remaining allegations in paragraph "8" of the Plaintiffs' Complaint.

JURISDICTION AND VENUE

9. The Defendant denies the allegations contained in paragraph "9" of the Plaintiffs' Complaint and respectfully refers all questions of law to the Court for judicial determination.

10. The Defendant denies the allegations contained in paragraph "10" of the Plaintiffs' Complaint and respectfully refers all questions of law to the Court for judicial determination.

FACTUAL BACKGROUND

11. The Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "11" of the Plaintiffs' Complaint.

12. The Defendant denies he was a closing agent and denies knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph "12" of the Plaintiffs' Complaint.

13. The Defendant denies he was a title agent and denies knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph "13" of the Plaintiffs' Complaint.

14. The Defendant denies the allegations contained in paragraph "14" of the Plaintiffs' Complaint.

15. The Defendant admits upon information and belief only that Steven M. Leff has been charged with a crime and denies the remaining allegations contained in paragraph "15" of the Plaintiffs' Complaint.

16. The Defendant denies any wrongful conduct that caused Plaintiffs any losses and denies knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph "16" of the Plaintiffs' Complaint.

17. The Defendant denies any wrongful conduct that caused Plaintiffs' any losses and denies knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph "17" of the Plaintiffs' Complaint.

FIRST PURPORTED CLAIM FOR RELIEF
(Breach of Contract–Against All Defendants)

18. The Defendant repeats, reiterates and realleges each and every response to the allegations in the Plaintiffs' Complaint, as if each were set forth verbatim herein.

19. The Defendant denies the allegations contained in paragraph "19" of the Plaintiffs' Complaint.

20. The Defendant denies the allegations contained in paragraph "20" of the Plaintiffs' Complaint.

21. The Defendant denies the allegations contained in paragraph "21" of the Plaintiffs' Complaint.

22. The Defendant denies the allegations contained in paragraph "22" of the Plaintiffs' Complaint.

SECOND PURPORTED CLAIM FOR RELIEF
(Conversion-Against all Defendants)

23. The Defendant repeats, reiterates and realleges each and every response to the allegations in the Plaintiffs' Complaint, as if each were set forth verbatim herein.

24. The Defendant denies the allegations contained in paragraph "24" of the Plaintiffs' Complaint.

25. The Defendant denies the allegations contained in paragraph "25" of the Plaintiffs' Complaint.

26. The Defendant denies the allegations contained in paragraph "26" of the Plaintiffs' Complaint.

27. The Defendant denies the allegations contained in paragraph "27" of the Plaintiffs' Complaint.

28. The Defendant denies the allegations contained in paragraph "28" of the Plaintiffs' Complaint

THIRD PURPORTED CLAIM FOR RELIEF
(Breach of Fiduciary Duty-Against All Defendants)

29. The Defendant repeats, reiterates and realleges each and every response to the allegations in the Plaintiffs' Complaint, as if each were set forth verbatim herein.

30. The Defendant denies the allegations contained in paragraph "30" of the Plaintiffs' Complaint.

31. The Defendant denies the allegations contained in paragraph "31" of the Plaintiffs' Complaint.

32. The Defendant denies the allegations contained in paragraph "32" of the Plaintiffs' Complaint.

33. The Defendant denies the allegations contained in paragraph "33" of the Plaintiffs' Complaint.

34. The Defendant denies the allegations contained in paragraph "34" of the Plaintiffs' Complaint.

FOURTH PURPORTED CLAIM FOR RELIEF
(Fraud-Against All Defendants)

35. The Defendant repeats, reiterates and realleges each and every response to the allegations in the Plaintiffs' Complaint, as if each were set forth verbatim herein.

36. The Defendant denies the allegations contained in paragraph "36" of the Plaintiffs' Complaint.

37. The Defendant denies the allegations contained in paragraph "37" of the Plaintiffs' Complaint.

38. The Defendant denies the allegations contained in paragraph "38" of the Plaintiffs' Complaint.

39. The Defendant denies the allegations contained in paragraph "39" of the Plaintiffs' Complaint.

40. The Defendant denies the allegations contained in paragraph "40" of the Plaintiffs' Complaint.

FIFTH PURPORTED CLAIM FOR RELIEF
(Negligence-Against All Defendants)

41. The Defendant repeats, reiterate and realleges each and every response to the allegations in the Plaintiffs' Complaint, as if each were set forth verbatim herein.

42. The Defendant denies the allegations contained in paragraph "42" of the Plaintiffs' Complaint.

43. The Defendant denies the allegations contained in paragraph "43" of the Plaintiffs' Complaint.

44. The Defendant denies the allegations contained in paragraph "44" of the Plaintiffs' Complaint.

SIXTH PURPORTED CLAIM FOR RELIEF
(Unjust Enrichment-Against All Defendants)

45. The Defendant repeats, reiterates and realleges each and every response to the allegations in the Plaintiffs' Complaint, as if each were set forth verbatim herein.

46. The Defendant denies the allegations contained in paragraph "46" of the Plaintiffs' Complaint.

47. The Defendant denies the allegations contained in paragraph "47" of the Plaintiffs' Complaint.

48. The Defendant denies the allegations contained in paragraph "48" of the Plaintiffs' Complaint.

49. The Defendant denies the allegations contained in paragraph "49" of the Plaintiffs' Complaint.

SEVENTH PURPORTED CLAIM FOR RELIEF
(Money Had and Received-Against All Defendants.)

50. The Defendant repeats, reiterates and realleges each and every response to the allegations in the Plaintiffs' Complaint, as if each were set forth verbatim herein.

51. The Defendant denies the allegations contained in paragraph "51" of the Plaintiffs' Complaint.

52. The Defendant denies the allegations contained in paragraph "52" of the Plaintiffs' Complaint.

53. The Defendant denies the allegations contained in paragraph "53" of the Plaintiffs' Complaint.

54. The Defendant denies the allegations contained in paragraph "54" of the Plaintiffs' Complaint.

AFFIRMATIVE DEFENSES

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

The Plaintiffs' Complaint fails to state a cause of action for which relief may be granted against the Defendant and should be dismissed.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

The Defendant exercised due care and diligence in all matters alleged in the Plaintiffs' Complaint.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

Any damages to the Plaintiffs are the result of the acts or omissions of third persons or entities over which the Defendant exercised no direction or control.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

The Plaintiffs' purported breach of contract claim must be dismissed pursuant to the Statute of Frauds.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

The Defendant was not the proximate cause of the Plaintiffs' alleged damages.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

The Plaintiffs' Complaint fails to comport with Rule 9(b) and should be dismissed.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

The Plaintiffs' Complaint fails to establish actionable damages resulting from the Defendant's alleged acts/omissions.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

The Plaintiffs' Complaint fails to establish that the Defendant's conduct fell below the applicable standard of care.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

The Plaintiffs' Complaint fails to join persons needed for just adjudication.

WHEREFORE, Defendant Richard Leff hereby demands judgment dismissing the Plaintiffs' Complaint in its entirety, together with the costs and disbursements of this action, including attorneys' fees and for such other, further and different relief as this court may deem just and proper.

Dated: New York, New York
October 29, 2007

Respectfully Submitted,

KAUFMAN BORGEEST & RYAN LLP

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Michael Neri

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CERTIFICATE OF SERVICE

This is to certify that true and correct copies of the foregoing: **ANSWER** was served via first class mail on the 29th day of October 2007 upon:

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JONATHAN B. BRUNO (JB 6163)